

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0539-11
Bill No.: SCS for HS for HCS for HB 228
Subject: State Attorney General; Business and Commerce; Merchandising Practices
Type: Original
Date: May 5, 2003

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on General Revenue Fund	\$0	\$0	\$0

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Merchandising Practices Revolving Fund	(\$92,499)	(\$93,610)	(\$96,022)
Total Estimated Net Effect on Other State Funds	(\$92,499)	(\$93,610)	(\$96,022)

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2004	FY 2005	FY 2006
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Revenue, Missouri House of Representatives**, and the **Missouri Senate** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a previous version of this proposal, officials from the **Department of Economic Development** assumed the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of State Public Defender** assume the proposed legislation would have no fiscal impact on their agency.

Officials from the **Office of State Courts Administrator** assume the proposed legislation would have no fiscal impact on the courts.

In response to a previous version of this proposal, officials from the **Office of Prosecution Services** assumed the proposed legislation would have no fiscal impact on prosecutors.

ASSUMPTION (continued)

Officials from the **Office of Secretary of State (SOS)** assume the proposal creates a no-spam list in the Attorney General's Office for unsolicited commercial e-mail and could result in the Attorney General promulgating rules to implement the provisions of this act. These rules will be published in the *Missouri Register* and the *Code of State Regulations*. Based on experience with other divisions, the rules, regulations, and forms issued by the Committee could require as many as 34 pages in the *Code of State Regulations* and half again as many pages in the *Missouri Register*, as cost statements, fiscal notes, and the like are not repeated in the Code. The estimated cost of a page in the *Missouri Register* is \$23 and the estimated cost of a page in the *Code of State Regulations* is \$27. Based on these costs, the estimated cost of the proposal is \$2,091 in FY 04 and unknown in subsequent years. The actual cost could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded, or withdrawn.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which would require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Department of Corrections (DOC)** assume they could not predict the number of new commitments which could result from the creation of the offense(s) outlined in the proposal. An increase in commitments would depend on the utilization of prosecutors and the actual sentences imposed by the courts.

If additional persons were sentenced to the custody of the DOC due to the provisions of this legislation, the DOC would incur a corresponding increase in operational costs either through incarceration (FY 02 average of \$35.52 per inmate per day, or an annual cost of \$12,965 per inmate) or through supervision provided by the Board of Probation and Parole (FY 02 average \$3.10 per offender, per day, or an annual cost of \$1,132 per offender).

The following factors contribute to DOC's minimal assumption:

- DOC assumes the narrow scope of the crime will not encompass a large number of offenders.
- The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence.

ASSUMPTION (continued)

- The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another.

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but DOC officials assume that the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

Officials from the **Office of Attorney General (AGO)** assume they would require two FTE Investigators (each at \$27,500 per year, plus fringe benefits, equipment and expenses) to implement this proposal. These Investigators will follow up on complaints regarding unsolicited commercial electronic mail and child pornography complaints. The AGO also assumes it will recover unknown amounts through enforcement actions.

The AGO estimates the net fiscal impact of the proposal to be a cost to the Merchandising Practices Revolving Fund of \$92,499 in FY 2004; \$93,610 in FY 2005; and \$96,022 in FY 2006.

<u>FISCAL IMPACT - State Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
MERCHANDISING PRACTICES REVOLVING FUND			
<u>Costs – Office of Attorney General</u>			
Personal Service (2 FTE)	(\$45,833)	(\$56,375)	(\$57,784)
Fringe Benefits	(\$18,549)	(\$22,815)	(\$23,385)
Equipment and Expense	<u>(\$28,117)</u>	<u>(\$14,420)</u>	<u>(\$14,853)</u>
<u>Total Costs – AGO</u>	<u>(\$92,499)</u>	<u>(\$93,610)</u>	<u>(\$96,022)</u>
ESTIMATED NET EFFECT ON MERCHANDISING PRACTICES REVOLVING FUND	<u>(\$92,499)</u>	<u>(\$93,610)</u>	<u>(\$96,022)</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2004 (10 Mo.)	FY 2005	FY 2006
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small businesses who use unsolicited electronic mail could experience a fiscal impact as a result of this legislation.

DESCRIPTION

The proposed legislation would place certain requirements for sending commercial electronic mail messages.

It would be a violation to send any commercial electronic mail message to any subscriber in the state with a false identity or with false or misleading information. Persons who initiate electronic transmissions, whether unsolicited or not, which solicit the purchase of, rental of, or investment in property, goods or services would be required to clearly state in the subject line their identity and as the first four letters of the subject line would be "ADV:" or if it obscene material the first eight characters of the subject line would be "ADV:ADLT."

The Attorney General could prosecute violations. Persons could be liable for civil penalties of up to \$5,000 per knowing violation, not to exceed \$25,000 per day, as well as sanctions for unlawful merchandising practices.

It would be a defense if the defendant has implemented due care to effectively prevent the transmission of unsolicited electronic mail messages. No action could be brought more than two years after the alleged violation was known or could have been known. A court could exercise personal jurisdiction over nonresidents.

An email service provider would not be liable for unlawful merchandising due to the fact that they are an intermediary between the sender and recipient, that they provide transmission of the unsolicited commercial email over the providers computer network or facilities, or that they block messages in good faith which they believe violate the provisions of this act.

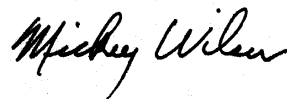
Upon receipt of information that child pornography is contained on a website, the Attorney General would investigate. Upon probable cause, the Attorney General would notify the website operator in writing of the child pornography. If the operator would promptly, but not longer than five days after notice, remove the material and as long as they are not the purveyor of the material, there would be civil immunity. If the material is not removed, the Attorney General could seek an injunction. These provisions would not be construed to create any defense to criminal charges.

DESCRIPTION (continued)

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of Attorney General
Department of Economic Development
Office of State Courts Administrator
Department of Corrections
Department of Revenue
Missouri House of Representatives
Office of Prosecution Services
Missouri Senate
Office of Secretary of State
Office of State Public Defender



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